

EVIDENCE APPENDIX

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Serial No.: 09/832,141

Filed: April 9, 2001

For: SCENTED BOWLING BALLS AND
METHODS

Confirmation No.: 8520

Examiner: W. Pierce

Group Art Unit: 3711

Attorney Docket No.: 1858-4826US

VIA ELECTRONIC FILING
November 13, 2007

DECLARATION OF JOHN W. CHRISMAN, III

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I, John W. Chrisman, III, declare that:

1. I am competent to give sworn testimony.
2. I am the President and C.E.O. of Storm Products, Inc., (hereinafter "Storm") a corporation organized under the laws of the State of Utah.
3. I have served in this capacity at Storm since its organization on September 16, 1985.
4. Storm manufactures, markets, and sells a variety of bowling-related products, including bowling balls. The bowling balls that are manufactured, marketed, and sold by Storm are priced at \$60 and higher. These include conventional, unscented bowling balls, as well as scented bowling balls. I am informed and believe that all of our scented bowling balls are within the scope of claims of U.S. Patent Application

Serial No. 09/832,141 (hereinafter the '141 Application) and are manufactured by processes that are within the scope of claims of the '141 Application.

5. At the time of my first declaration in this patent application, Storm currently enjoys a market share of twenty-eight percent (28%) of the bowling ball market in which it participates. *See* Exhibit 1 to my declaration of March 27, 2006. Storm's share of the market segment in which its scented bowling balls participate has since increased to more than thirty-six percent (36%).

Commercial Success

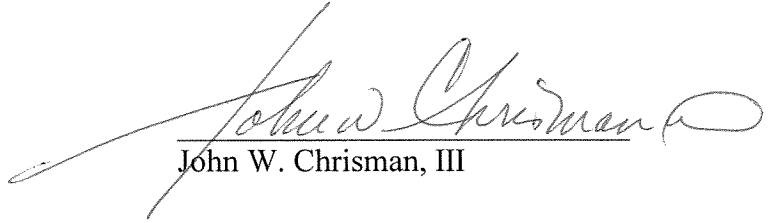
6. Prior to selling scented bowling balls, Storm sold fewer than 150,000 balls each year. In 1998, Storm sold 126,321 bowling balls, representing gross revenues to Storm of \$8,885,669.31. In 1999, Storm sold 145,320 bowling balls, representing gross revenues to Storm of \$10,830,114.31.
7. Storm began marketing scented bowling balls in 2000. Our first sales occurred on April 12, 2000.
8. Since that date, Storm's scented bowling balls have consistently been priced higher than other bowling balls in the same market segment. Currently, Storm sells its bowling balls to distributors at \$45 apiece, while other bowling balls in the same market segment are sold for four or five dollars less. *See* Exhibit 12.
9. Although scented bowling balls were only sold for seven and a half months of that year, 59% of the balls we sold in the year 2000 were scented (93,320 scented bowling balls (gross revenues of \$6,510,180.90) of a total of 158,010 total bowling balls (gross revenues of \$11,268,527.16) sold that year). Our scented bowling balls quickly began outselling our unscented bowling balls.
10. After introducing the scented bowling ball, our sales of bowling balls jumped significantly. In 2001, we sold 213,464 bowling balls in all (gross revenues of \$15,122,945.73), 153,504 (gross revenues of \$11,931,312.18) of which were scented, representing 72% of all of the bowling balls we sold that year—an increase of 64% in scented bowling ball sales and 35% of our total bowling ball sales over the previous year. While our total sales increased significantly, our marketing expenditures did not.
11. Since 2001, we have maintained this high level of sales. Our sales of scented bowling balls, at a rate of around 150,000 or more each year, has continued to outpace our pre-2000 total bowling ball sales, which topped out at 145,320. In addition, we have been selling unscented bowling balls at a rate of about 85,000 or more each year. In

total, we have sold about 240,000 or more bowling balls each year for the past three years.

12. As a result of the commercial success of Storm's scented bowling balls since their introduction, our share of the market in which we participate has increased to about 28%. *See* Exhibit 1 to my declaration of March 27, 2006. Storm has become the number two manufacturer of bowling balls in the world. *See* Exhibit 2 to my declaration of March 27, 2006.
13. We have sold more than 750,000 scented bowling balls, representing gross receipts to Storm of over \$55,000,000.00.
14. The commercial success that Storm has experienced by selling scented bowling balls, as well as the unexpected results of scented bowling balls, have resulted in a lot of positive press for the company, including news stories on MSNBC.com (which can be viewed at <http://msnvideo.msn.com/video/default.aspx?replace=ac69fbce-795b-496e-8069-afba1464c46c%2Cd2bcab77-7573-4664-b01b-23d80f866906%2Cb040f3b4-9d39-4df3-a639-528cca5362c2%2C65071231-9da7-441d-af97-bc892000ef4b%2Cf939a571-6194-45f4-a55d-6969dcf5c278%2C6a701688-4518-4f19-b594-33c278721bfd%2C0bb3822d-0125-470c-ac0a-4279c426154b%2C0c863dc8-8618-4f1f-8db4-8a72ea88476d%2C2e1ab49f-83c5-4bc3-b30a-8978d997f1c6&autoStart=0>), NBC Television (on "Today Show"), Fox News Channel, ABC Television (on "Good Morning America), on NBC Television's "Saturday Night Live," and on a variety of local television stations (including KING5 television in Seattle, Washington, and KUTV and KSL-TV in Salt Lake City, Utah. The Fox News Channel, KUTV, "Saturday Night Live," and "Good Morning America" stories appear on the DVD enclosed with to my declaration of March 27, 2006 as Exhibit 1. The "Today Show" and KSL-TV news stories appear on the DVD enclosed with my declaration of March 27, 2006, as Exhibit 2.
15. In addition, several newspaper and magazine articles demonstrate the commercial success and unexpected results of Storm's scented bowling balls. For example, Storm's scented bowling balls have been the subject of articles in the Wall Street Journal (Exhibit 3 to my declaration of March 27, 2006), USA Today (Exhibit 4 to my declaration of March 27, 2006), and articles in a number of other national, regional, and local newspapers and magazines (Exhibit 5 - Exhibit 10 to my declaration of March 27, 2006), and received a mention in Sports Illustrated (Exhibit 11 to my declaration of March 27, 2006).
16. As many of these articles indicate, Storm's scented bowling balls have become so popular that fifteen (15) of the top pro bowlers, including Professional Bowlers' Association (PBA) Hall of Fame member Pete Weber, use them. In fact, nine (9) of the twenty (20) tournaments in the PBA's 2003-2004 season were won with Storm's scented bowling balls.

17. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated this 7 day of June, 2007.


John W. Chrisman, III

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